

Title of Report : Local Government and Public Involvement in Health Act 2007 – Changes to the Ethical Framework – Introduction of the ‘Local Filter’

Report of : Head of Legal & Democratic Services

To : Standards Committee

Date : 7th December 2007

Summary and Recommendations

Purpose of report : To advise the Committee on anticipated changes to the ethical framework and to consider issues of joint working and preparation for changes

Key decision : No

Portfolio Holder : N/A

Scrutiny Responsibility : N/A

Ward(s) affected : All

Policy Framework : None

Approved by : N/A

Recommendations :

That the Head of Legal & Democratic Services continues to discuss joint working with the Oxfordshire authorities and that a special meeting of the Committee be convened once the draft Regulations are published so that the Committee may consider formally responding.

Provisions of the Act

1. The Local Government and Public Involvement in Health Act 2007 (‘the Act’) received royal assent on the 31st October 2007.
2. Sections 183 to 201 of the Act contain provisions dealing with the conduct of Members.

3. Section 183 deals with the affect of the Livingstone judgment which clarified that the Code of Conduct can only regulate the conduct of a Member acting in their official capacity and not otherwise. It provides for both the Code and the principles of conduct to apply when a member is acting in a 'private' capacity where that conduct constitutes a criminal offence. S.183(4) specifically deletes the words "in performing his functions" from S.52 of the Local Government Act 2000 (the crucial wording in the Livingstone judgment).
4. S.183 did not come into force with the passing of the Act but will require a commencement order to be made. The latest information I have from the Board/DCLG is that it will be next summer before it is introduced.
5. S.185 provides for all complaints in respect of members or co-opted members of the authority to be made to its Standards Committee. The Committee must either refer the complaint to the Monitoring Officer (for investigation), refer the allegation to the Board or decide that no action should be taken. This is the 'local filter'. The section goes on to provide for a 'review' of any decision not to act.
6. S.185 also makes provision to allow the Board to suspend a standards committee and to require periodic returns to be made to the Board. These powers are the manifestation of the Board turning itself into a 'strategic regulator'.
7. S.187 requires standards committees to be chaired by an independent member and S.189 provides for joint standards committees. The remaining provisions make other amendments but they are of less immediate relevance to the Committee. As with the local filter provisions the sections are not yet in force.

'Local Filter'

8. At present all complaints are made centrally to the Standards Board. Broadly, 80% of all complaints made are declined for investigation and the process for each complaint takes on average 10 days.
9. The provision in the Act which entitles a complainant to ask for a review of a decision not to investigate their complaint will require a separation of roles amongst members of the committee. In short, a member cannot review their own decision. However, a member who is involved in determining that a complaint merits investigation is not then precluded from sitting on the hearing which determines whether there has been a breach of the Code in the circumstances complained of. Although there was some confusion on this point amongst some attendees at the Annual Assembly in October I am clear in my own mind that that is the correct position and I understand that the Board's guidance, when it is published, will reflect that.

10. I have discussed with my counterparts in the Oxfordshire authorities whether some model of joint working might be a way forward for dealing with the initial filtering of complaints. Our concern, as Monitoring Officers, is that the current robustness in dealing with unmeritorious complaints will be lost and that there may develop a tendency to investigate simply to demonstrate to others that there was nothing actionable in the complaint. There is a further concern that the close working relationship we have with our Members will come under severe strain in an entirely local model.
11. There is no suggestion or appetite for the final hearing of an investigated complaint to be carried out by a joint committee. There is merit, however, in considering a joint committee or panel for the initial filter. The common assumption is that the initial consideration of a complaint will be done by 3 members (with legal advice) and that if a review is requested it will be done by a different set of 3 members (again with advice). The panel of 3 members could be made up entirely of independent members or a mix of elected and independent members. There are sound policy reasons why a mixed panel would be preferable and, indeed, in the absence of a joint panel for the Oxfordshire authorities the numbers involved would demand such an arrangement in any event.
12. The numbers of independent members at neighbouring authorities are as follows:-

County	4
Cherwell	2
Vale	2
West	2
South	2

We are fortunate that the recent appointments by Council takes our total to 5.

13. The issue of a joint panel is potentially sensitive, politically. For example, Cherwell District Council have already indicated that their preference, at the moment, is not to explore joint working. There are also many practical considerations, e.g. the County may not, for understandable reasons, wish to enter into an arrangement which would involve their members or Monitoring Officer in complaints about parish council members.
14. The views of the committee are sought on the issue of a joint panel for the initial filtering of complaints.
15. The other issue for the committee is the publicity to be given to how individuals are to make complaints, both at the point of change over from the Board to ourselves and into the long term. I would welcome

the committee's views as to the method and extent of communication required.

16. The commencement date is not yet known but our working assumption must be April 2008. There is a great deal of detail yet to be issued and worked through but a discussion by the committee, at this stage, will assist our preparations.

Resources

17. There will be an inevitable increase in the workload for Legal and Democratic Services and there are no resources forthcoming from central government. It is not possible to predict how many complaints will be made and a speculative bid in a tight 2008/09 budget round would be unhelpful to the organisation as a whole. Whilst I hope that the complaints will be few and far between I will keep under review whether the existing resources within the service are sufficient to support the committee and investigate complaints with the thoroughness that both deserve.

Recommendations

18. That the Head of Legal & Democratic Services continues to discuss joint working with the Oxfordshire authorities and that a special meeting of the Committee be convened once the draft Regulations are published so that the Committee may consider formally responding.

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Background papers – None.